Bulkmatic Transport Company *and* Local Union No. 407 a/w the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 8–CA–33405

September 30, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On October 25, 2002, Administrative Law Judge Margaret G. Brakebusch issued the attached bench decision, supplemented by a written certification and Order dated November 29, 2002. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings, and conclusions and to adopt the recommended Order.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Bulkmatic Transport Company, Cleveland, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Dated, Washington, D.C. September 30, 2003

Robert J. Battista, Chairman

Wilma B. Liebman, Member

Dennis P. Walsh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to deduct and remit to the Union the union dues required by the Master Freight Agreement and Central States Truckload and Steel Supplement Agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days of the date of the Board's Order, begin deducting and remitting to the Union dues owed to the Union as required under the terms of the 1998–2003 Master Freight Agreement and Central States Truckload and Steel Supplement Agreement and WE WILL reimburse the Union for the losses resulting from our failure to deduct and remit union dues since May 1, 2002.

BULKMATIC TRANSPORT CO.

Nancy Rrecko,Esq., for the General Counsel.
Brian W. Easley, Esq. and Andrew Szot, Esq., for the Respondent.
Diana S. Brown, Esq., for the Charging Party.

[1] We agree with the judge that the Respondent violated Sec. 8(a)(5) and (1) of the Act by ceasing to deduct and remit dues to the Union upon expiration of the rider agreement but before the expiration of the master agreement. The rider agreement, which contained articles relating to matters such as wages, and health and welfare and pension benefits, expired April 30, 2002. The master agreement, which contained the dues-checkoff obligation and provisions pertaining to union security, among other things, expired March 31, 2003. We find the parties intended that the provisions of the two agreements would expire at different times, and that the separate expiration dates were not inconsistent clauses in the collective-bargaining agreements. We do not rely upon the judge's conclusion that the master agreement contained substantial terms and thus would be a contract bar. Rather, we rely upon the fact that the master agreement contained the checkoff clause, and thus the expiration date of that contract governed the termination date for checkoff.

Member Liebman dissented in *Hacienda Resort Hotel & Casino*, 331 NLRB 665 (2000), vacated sub nom. *Local Executive Board of Las Vegas Culinary Workers Local 226 v. NLRB*, 309 F.3d 578 (9th Cir. 2002), relied on by the judge. However, she and Member Walsh find it unnecessary here to reach the issue decided in that case.

[2] We shall substitute a new notice to conform to the judge's Order.

SUPPLEMENT TO BENCH DECISION

STATEMENT OF THE CASE

Margaret G. Brakebusch, Administrative Law Judge. I heard this matter at Cleveland, Ohio, on October 24 and 25, 2002. At the close of evidence and argument, I delivered a bench decision pursuant to Section 102.25 (a)(10) of the Board's Rules and Regulations, finding that the Company had engaged in certain unfair labor practices. Specifically, I found that the Company has engaged in violations of 29 U.S.C. §158 (a)(1) and (5). This certification of that Bench Decision, along with the order that appears below, triggers the time period for filing an appeal (exceptions) to the National Labor Relations Board.

For the reasons stated by me on the record at the close of the trial, and by virtue of the prima facie case established by the General Counsel, I found that Bulkmatic Transport Company violated Section 8(a)(1) and (5) of the Act by its discontinuance of dues checkoff in about May 2002. I rejected the Company's argument that its obligation to deduct union dues ceased upon the expiration of the parties' rider agreement to the master agreement. As found by the Board in *Hacienda Resort Hotel & Casino*, 331 NLRB 665 (2000), an employer's obligation to continue a dues-checkoff arrangement expires with the contract that created the obligation. I did not find such expiration in the instant case. The record did not demonstrate that the Company's contractual obligations under the master agreement were terminated upon the expiration of the rider agreement. I found no documentary evidence or testimony to support a finding that the parties intended for the expiration of the rider to extinguish or terminate the master agreement. Inasmuch as the Company unilaterally ceased to deduct union dues when there had been no termination of the collective-bargaining agreement that created the Company's obligation to do so, I find that the Company has violated Section 8(a)(1) and (5) of the Act.

I certify the accuracy of the portion of the transcript, as corrected, pages 71 to 90, containing my Bench Decision, and I attach a copy of that portion of the transcript, as corrected as "Appendix A." The decision is further supplemented to include the following recommended Order and proposed notice to employees. A copy of the notice to employees is attached hereto as "Appendix B."

CONCLUSIONS OF LAW

1. The Company, Bulkmatic Transport Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union, Local Union No. 407 A/W The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America is a labor organization within the meaning of Section 2(5) of the Act.

3. The following employees of the Company constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

> All drivers domiciled and located at the Company's 1635 Merwin Avenue, Cleveland, Ohio terminal, but excluding all office clericals, guards, and supervisors as defined in the Act.

4. By unilaterally failing and refusing to deduct and remit to the Union proper dues from the unit employees since on or about May 1, 2002, the Company has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

5. The Company's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Company has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, I have found that the Company violated Section 8(a)(1) and (5) of the Act by its failure to deduct and remit union dues to the Union after May 1, 2002. Accordingly, the Company must deduct and remit union dues as required by the collective-bargaining agreement and must reimburse the Union for its failure to do so since May 1, 2002, with interest as prescribed in *El Centro Community Mental Health Center*, 266 NLRB 1 (1983). *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Bulkmatic Transport Company, Cleveland, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to deduct and remit to the Union, the union dues as required by the master freight agreement and central states truckload and steel supplement agreement.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days of the date of this order, begin deducting and remitting to the Union dues owed to the Union as required under the terms of the 1998–2003 Master Freight Agreement and Central States Truckload and Steel Supplement Agreement and reimburse the Union for the losses resulting from Respondent's failure to deduct and remit union dues since May 1, 2002, as set forth in the remedy section of this decision.

(b) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, Social Security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of reimbursement due under the terms of this Order.

(c) Within 14 days after service by the Region, post at its Cleveland, Ohio facility copies of the attached notice marked

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

"Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 1, 2002.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 29, 2002

APPENDIX A

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This is the resumption of Bulkmatic Transport Company, 8-CA-33405 and this is the 25th of October 2002. Counsel gave closing arguments yesterday and I am now prepared to give a bench decision in this matter pursuant to the Board's Rules and Regulations under Section 102.35 (a)(10). Initially however, I want to commend counsel for presenting a very efficient and focused presentation of evidence, as well as having articulated very concise and well-reasoned arguments. Additionally, your courtesy to each other and the professionalism that you have demonstrated have been exemplary.

This is an unfair labor practice case prosecuted by the National Labor Relations Board's General Counsel, acting through the Regional Director for Region 8 of the National Labor Relations Board, hereinafter the Board. Following an investigation by Region 8's staff, the Regional Director for Region 8 issued a Complaint and Notice of Hearing on July 30, 2002 against Bulkmatic Transport Company, hereinafter Company, based upon an unfair labor practice charge filed on May 28, 2002 by Local Union No. 407 A/W The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, hereinafter the Union. The complaint alleges that on or about May 1, 2002, the Company failed to continue in effect all the terms and conditions of the Master Freight Agreement and the Central States Truckload and Steel Supplement by ceasing to check off and remit dues to the union. The Complaint alleges that such action is in violation of Section 8(a)(1) and (5) of the Act. The Company filed an answer, denying the essential allegations in the Complaint.

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I have considered the entire record in arriving at this decision. While this case requires no credibility resolutions, I have carefully observed the three witnesses as they have testified and I have considered their testimony with other record evidence. Although there may be evidence or counsel's arguments that I do not specifically mention in the decision, I have not failed to consider such evidence or argument. Certain of the facts in this case are admitted, stipulated or undisputed. I am required to set forth certain of those facts, such as the jurisdictional information, which I shall now do. It is admitted that the Company is an Illinois corporation, with an office and place of business in Cleveland, Ohio where it has been acting as a common carrier specializing in interstate transportation of dry and liquid bulk commodities. Annually, the Company, in conducting its business operations derives gross revenues in excess of $50,000 for the transportation of freight from the State of Ohio directly to points located outside the state of Ohio.

The evidence establishes and the parties admit that the Company is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Relations Act, as amended, hereinafter the Act. I find the Company to be an employer engaged in commerce within the meaning of the Act. The parties admit that the Union is a labor organization within the meaning of Section 2(5) of the Act and I so find.

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It is undisputed that certain of the Company's employees; herein called the Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act. The employees included in the Unit are:

All drivers domiciled and located at the Employer's 1635 Merwin Avenue, Cleveland, Ohio terminal, but excluding all office clerical, guards, and supervisors as defined in the Act.

Background Information

It is undisputed that the Union has represented the Unit employees since 1978. Currently, there are four employees in the bargaining unit and three of those employees have been represented by the Union for more than twenty years. The Company admits that at all material times, the Union has been the designated exclusive collective bargaining representative of employees in the Unit, and that the Company has recognized the Union since August 10, 1998

By joint stipulation, the parties submitted into evidence a copy of the Master Freight Agreement and Central States Truckload and Steel Supplement Agreement, hereinafter Master Agreement covering the period from April 1, 1998 through March 31, 2003. There is no dispute that the Company and the Union are both signatory to that agreement. Union President Alex Adams testified that when he became President of Local 407 in 2000, he had occasion to review the collective bargaining agreements on file

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with the Union. He discovered that he did not have a signed copy of the Master Agreement with not only the Company but also three other employers as well. He sent the agreement to the Company and it was returned with a signature. Adams confirmed that the Company has abided by the terms of the agree-

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

ment even before the 2000 signing of the document. The Master Agreement that was admitted into evidence contains the signature of the Company's Vice President of Operations, Mike Brown. At the time that Brown signed the agreement on April 27, 2000, he was the Company's Regional Operations Manager.

Section 1 of the Master Agreement provides that the execution of the agreement on the part of the employer shall apply to all operations of the employer which are covered by this agreement and shall have application to the work performed within the classifications defined and set forth in the agreements supplemented hereto. The agreement further states:

"There are several segments of the trucking industry covered by this agreement and for this reason Supplemental Agreements are provided for each of the specific types of work performed by the various classifications of employees controlled by this Master Agreement. All such Supplemental Agreements are subject to and controlled by the terms of this Master Agreement and are sometimes referred to herein as "Supplemental Agreements".

Article 3, Section 3 of the Master Agreement provides that:

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"The Employer agrees to deduct from the pay of all employees covered by this Agreement the dues, initiation fees and/or uniform assessments of the Local Union having jurisdiction over such employees and agrees to remit to said Local Union all such deductions."

By joint stipulation, the parties submitted into evidence a copy of a document captioned as "Rider to Central States Area Iron and Steel and Truckload Agreement", hereinafter Rider. The agreement provides that the agreement shall be in effect for the period of April 1, 1998 through April 30, 2002. The Rider specifies that it is an agreement between the Company and the Union concerning all drivers domiciled and located at the Company's 1635 Merwin Ave, Cleveland, Ohio facility. The agreement further provides that the Rider shall be attached to and become a part of the current Central States Area Iron and Steel and Truckload Agreement and any successor agreement thereto. The Rider further provides that if any article or paragraph of the Rider conflicts or is inconsistent with the Central States Iron and Steel and Truckload Agreement, the article or paragraph of the Rider shall supersede the Master Agreement. Article 12 of the Rider provides that it shall be effective as of April 1, 1998 and shall remain in full force and effect through the 30th day of April 2002. The agreement further states: "It is understood and agreed that either party may, by proper written notification to the other party at least sixty days prior to the expiration date of April 30, 2002, terminate or request negotiations to modify this Rider." The document is dated August 10, 1998.

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The Rider contains separate articles relating to wages, casual employees, holidays, vacations, sick days, meals, lodging, funeral leave, health and welfare, and pension. The Rider specifically states that while the Rider incorporates certain portions of the Master Agreement, the Company is not agreeing to be part of, or party to, any multi-employer bargaining unit. The Rider further provides that its terms apply only to the employees at the Company's Merwin Avenue terminal facility. Article 11 of the Rider confirms that the cost of living and eight-hour guarantee provisions of the Master Agreement do not apply to employees covered by the Rider. The last page of the document contains an Addendum to the Rider, supplementing Article 9 relating to Pension. The addendum provides:

"Pursuant to Article 61 of the Area Agreement, the Company shall pay effective April 1, 1998 through March 31, 1999 the sum of $124.00 per week as pension contributions for each regular employee covered by this Rider. Effective April 1, 1999 through March 31, 2000, the Company shall pay $136.00 per week for each regular employee covered by this Rider. Effective April 1, 2000 through March 31, 2001, the Company shall pay $150.00 per week for each regular employee covered by this Rider. Effective April 1, 2001 through March 31, 2002, the Company shall pay $158.00 per week for each regular employee covered by this Rider. Effective April 1, 2002 through March 31, 2003, the Company shall pay $166.00 per week for each regular employee covered by this Rider. The Company shall pay the daily rate for each casual employee covered by this Rider."

The Rider agreement was signed by a representative of the Union and by Mike Brown for the Company and dated April 30, 1999 and April 23, 1999, respectively.

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Mike Brown testified that he was the sole negotiator for the Company during the negotiations for the 1998 Rider agreement. He recalls that the Union and the Company had only one bargaining session that was held at the Union's office. The Company offered no proposals to the previously negotiated agreement. Brown recalls that the Union proposed changes with respect to wages, casual employees, sick days and health and welfare and these were incorporated into the agreement. He testified that the Union also proposed the term of the agreement.

Brown described the Rider agreement as what the parties "lived and died by." In explaining the importance of the Rider agreement, he testified that he had not even seen the Master Agreement at the time that he negotiated the Rider Agreement. He recalled that he had not seen the Master Agreement until the Union sent him the copy for signing in April 2000. Brown testified that during the Rider negotiations, the Union had not explained what would happen if there was a difference in the terms of the Master Agreement and the Rider agreement.

Termination of the Rider Agreement

By a letter dated January 31, 2002, Labor Attorney Lawrence C. DiNardo informed the Union that the Company desired to terminate the collective bargaining agreement between the Company and the Union for the Merwin Ave Unit employees. DiNardo confirmed that as required by law, the Company was prepared to negotiate in

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good faith with the Union regarding a new agreement. By letter dated February 5, 2002, Union President Alex Adams in-

formed the Company that the Union desired to revise or change terms and/or conditions including monetaries and fringe benefits for the Rider to the Central States Area Iron and Steel and Truckload Agreement. Adams suggested that negotiations might be completed before the April 30, 2002 expiration date of the Rider. Brown testified that the Union and the Company have engaged in two bargaining sessions for the negotiation of a new Rider agreement. He recalls that the first session was only a brief meeting between the parties in Chicago. The Company presented proposals during a second meeting that occurred sometime in April or May of 2002.

In approximately mid-May, 2002, the Union Steward notified Union Business Agent Benjamin Sizemore that the Company had ceased deducting Union dues for its employees. Sizemore confirmed that the Union had never received any notice from the Company that it intended to cease dues deduction. Union President Adams testified that the Company has deducted no Union dues since May 2002.

On May 17, 2002, the Union filed a grievance concerning the Company's failure to deduct Union dues from its members. By letter dated May 28, 2002, the Company responded to the Union's grievance. In its letter to the Union, the Company asserts that because of the expiration of the collective bargaining agreement, the Company cannot lawfully deduct dues on behalf of the Union. The Company also asserts that because of the expiration of the collective bargaining agreement, there is no arbitration agreement

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and the Company will not agree to submit the grievance to arbitration or resolution by any Joint Committee.

The Company admits that it discontinued checking off and remitting dues to the Union upon the expiration of the collective bargaining agreement on April 30, 2002. General Counsel submits that when the Company ceased check-off, it failed to continue in effect all the terms and conditions of the Master Agreement and those terms and conditions of employment are mandatory subjects of bargaining. General Counsel asserts that by discontinuing dues check-off, the Company has interfered with, restrained and coerced employees in violation of Section 8(a)(1) of the Act. General Counsel further asserts that the Company has failed and refused to bargain collectively and in good faith with the Union in violation of Section 8(a)(1) and (5) of the Act.

The Company takes the position that the collective bargaining agreement terminated on April 30, 2002 in accordance with Section 8(d) of the Act. The Company relies upon the Board's ruling in *Bethlehem Steel Corp.*, 136 NLRB 1500, 1502 (1962) for the proposition that an employer does not commit an unfair labor practice by discontinuing dues check-off after the expiration of a collective bargaining agreement. The Company further argues that the unfair labor practices alleged are barred, in whole or in part, by Section 302 of the Labor Management Relations Act 29 U.S.C. Section 158, herein the LMRA. The Company submits that pursuant to Section 302 of the LMRA, it is unlawful for an employer to pay money or anything of value to a labor union in the absence of a valid collective bargaining agreement.

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Thus, there are two primary issues involved in this case. The first issue is whether the Company violated the Act by ceasing to deduct union dues following the expiration of the Rider Agreement in April 2002. In order to make this determination however, it is necessary to determine if there was an expiration of the collective bargaining agreement that created the contractual right to dues deduction. As the Company's counsel noted in oral argument, there is little factual dispute involved in this case. The area of dispute is in interpretation of the existing facts. General Counsel and the Charging Party maintain that while the Rider agreement expired in April 2002, the Master Agreement remains in full force and effect until March 31, 2003. By contrast, the Company argues that the parties' Rider agreement was the primary agreement and that upon its expiration in April 2002, the Company's check-off obligation also expired.

Board precedent dictates that most contractually established terms and conditions of employment are mandatory subjects of bargaining and cannot be changed unilaterally on contract expiration under *NLRB v. Katz*, 369 U.S. 736 (1962). Dues check-off however, has become one of those exceptions to this general rule. The parties do not dispute the well-established precedent that an employer's obligation to continue a dues-check-off arrangement expires with the contract that created the obligation. The Board first addressed the issue of the survivability of dues check-off provisions in *Bethlehem Steel*, 136 NLRB 1500, 1502 (1962). Since 1962, the Board has continued to find that an employer's check-off obligation terminates with contract expiration. Some of the more recent cases in which the Board has reiterated this holding are *Hacienda Hotel* 331

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NLRB [665] (2000), *Cotter & Co.* 331 NLRB [787] (2000), *Wilkes Telephone Membership Corporation* 331 NLRB [823] (2000), *Frito Lay, Inc.*, 333 NLRB [1296] (2001), and *Outdoor Venture Corporation* 336 NLRB No. 97 (2001).

The Company argues that based on *Bethlehem Steel* and the subsequent cases, the expiration of the Rider agreement extinguished the Company's check-off obligation. Counsel points to the Rider's preamble, giving controlling authority to the Rider in the event that any conflicts or inconsistencies arise between the master Agreement and the Rider Agreement. Counsel asserts that by the very language in the preamble it is apparent that the parties did not intend to create two agreements. The Company asserts that the documents must be read together and cannot be treated separately. The Company further argues however, that while some portions of the Master Agreement become part of the Rider, others do not. By example, Counsel references Article X of the Rider that specifically negates the Company's participation in any multi-employer bargaining unit.

The Company further argues that one contract cannot have two expiration dates. The Company takes the position that both the Union and the Company served written notice of intent to negotiate a new agreement. The Company argues that such conduct demonstrates that the parties understood that the contract was going to expire.

In support of its position, the Company cites *Contempo Design Incorporated* 226 F. 3d 535 (7th Cir. 2000) where the Court noted that the terms of a collective bargaining agreement are to be enforced strictly when the terms are unambiguous. In *North Drury*

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Lane Productions, the Seventh Circuit Court of Appeals affirmed that it must enforce the terms of a collective agreement when those terms are unambiguous. If the language of such an agreement lends itself to one reasonable interpretation only, it is not ambiguous. 80 F. 3d 203 (7th Cir. 1996). The Company argues that there is no ambiguity in the language of the Rider and the parties' intent to terminate the agreement on April 30, 2002 is clear.

The Company also argues however, that even if the language of the Rider was ambiguous with respect to the termination of the parties' collective bargaining agreement, the Union and the General Counsel have provided insufficient evidence that the parties intended the agreement to continue beyond April 30, 2002. The Company cites to the Board's decision in *Sansla, Inc*. 323 NLRB 107 (1997) in support of this argument. In *Sansla*, the Board explained:

"Whenever the terms of a written contract or other instrument are susceptible of more than one interpretation, or an ambiguity arises, or the intent or object of the instrument cannot be ascertained from the language employed therein, parole or extrinsic evidence may be introduced to show what was in the minds of the parties at the time of making the contract or executing the instrument, and to determine the object for or on which it was designed to operate."

The Company argues that neither the Union nor the General Counsel presented any evidence of what occurred in the Rider negotiations in 1998 and thus the record contains only the testimony of Brown. The Company contends that because Brown is the

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only witness who actually participated in the Rider negotiations, his testimony of the import of the Rider is undisputed and must be relied upon to cure any ambiguity in the language of the agreement. I note however, that Brown recalled no discussion with the Union during the Rider negotiations concerning what happens when there are inconsistencies in the terms of the two agreements. In his testimony, Brown did not include any discussions of negotiations of the Master Agreement during the 1998 rider negotiations.

Counsel argues that the economic terms are embodied in the Rider and it is the Rider that has been the guiding force for the parties' collective bargaining relationship. Counsel references Brown's testimony that he had not even seen the Master Agreement at the time that he negotiated the Rider agreement. In its 1969 decision in *Tri-State Transportation Company, Inc.* 179 NLRB 310, the Board dealt with the existence of both a master agreement and a supplemental agreement in the context of a contract bar issue. The Board determined that as the master agreement and the supplemental agreement had different dates, the one to be considered for election bar purposes was the agreement which embodied the basic terms and conditions of employment. The Board found that most of the basis terms and conditions of employment were set out in the master agreement. Terms relating to union-security, discharges and layoffs, grievance and arbitration, lock out and strikes, union steward visitation provisions as well as most general conditions were set out in the master agreement. The supplemental agreement contained certain variations in wages, vacations, holidays, dates of welfare and pension fund payments, and hours. The Board stated:

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"Since these modifications deal only with the peculiarities of the Employer's operations at this facility and in no way change the basic terms of employment covered by the master agreement, their incorporation in the supplemental agreement does not warrant consideration of the supplemental agreement as the basic agreement. "

As Counsel for the General Counsel points out in oral argument, the terms contained in the master agreement and the supplemental agreement in Tri State are consistent with the terms contained in the Master Agreement and the Rider in the present case. While the Rider may contain more economic terms than the Master Agreement, the Master Agreement contains the terms relating to seniority, the grievance procedure, work stoppages, closing of terminals and elimination of work, discharge and separation of employment, subcontracting, and drug testing. The Board has long determined that to serve as a bar, a contract must contain substantial terms and conditions of employment deemed sufficient to stabilize the bargaining relationship. It will not constitute a bar if it is limited to wages only, or to one or several provisions not deemed substantial. See *Appalachian Shale Products Co*. 121 NLRB 1160 (1958).

Noting the Board's holdings in *Tri-State Transportation Company, Inc., Appalachian Shale,* and *Cooper Tank and Welding Corp*. 328 NLRB [759] (1999), I find that the terms embodied in the Master Agreement are sufficiently substantial to not only act as a contract bar, but also to constitute the basic agreement.

There is no question that the preamble of the Rider provides that where there is any inconsistency or conflict between the terms of the Master Agreement and the Rider,

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the terms of the Rider prevail. I note however, that there is no language contained in the Rider that in any way limits the duration of the Master Agreement to this preamble limitation. By contrast, the addendum to the Rider sets out the Company's obligation for pension contributions through the life of the Master Agreement.

There is no dispute that while the parties have not negotiated a new Rider agreement, the Company has continued to adhere to contractual obligations found in both the Master Agreement as well as the Rider Agreement, with the exception of the check-off and arbitration provisions. I would also note that the check-off and arbitration provisions are contained in the Master Agreement and not the Rider agreement. Brown acknowledged

that while there is no reference to the dues check-off and the arbitration procedure in the Rider agreement, the Company has deducted dues in the past years and the grievance procedure has been in place.

Accordingly, while the Company may have viewed the Rider Agreement as their more important or pivotal agreement with the Union, there is insufficient evidence to demonstrate that the contractual obligations under the Master Agreement were terminated by the expiration of the Rider Agreement. There is no documentary evidence or testimony that the parties intended for the expiration of the Rider to extinguish or terminate the Master Agreement. Conversely, the 1999 addendum to the Rider specifically extends the contractual obligation for pension contributions to the end of the Master Agreement in 2003. Accordingly, by ceasing to check off and remit dues to the Union, the Company has failed and refused to bargain collectively and in good faith with

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the exclusive collective bargaining representative of its employees within the meaning of Section 8(d) of the Act in violation of Section 8(a)(1) and (5).

When I have received the transcript of these proceedings, I will prepare a certification of Bench Decision that will attach the transcript portion containing the Bench Decision. This certification will also contain specific remedy, order and notice provisions, which will embody my recommended findings and conclusions. It will be served on the parties and at that point, the period for filing an appeal of my decision will run. I also refer the parties to the Board's rules and Regulations for additional information regarding the time limit for the filing of an appeal.

And with that, the hearing is now closed.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

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Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

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WE WILL NOT fail or refuse to bargain collectively with Local Union No. 407 A/W The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America by failing and refusing to deduct union dues as required by the collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days of the Board's Order, deduct and remit the Union those dues required by our collective-bargaining agreement and WE WILL make whole the Union for any losses resulting from our failure to deduct and remit to the Union those dues required by our collective-bargaining agreement since May 1, 2002.

BULKMATIC TRANSPORT COMPANY